

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

02 FEB 19 PM 3:28

U.S. DISTRICT COURT
N.D. OF ALABAMA

LORETHA C. KENT,	}	
	}	
Plaintiff,	}	
	}	CIVIL ACTION NO.
v.	}	
	}	02-AR-0275-S
BAYER CORPORATION, et al.,	}	
	}	
Defendants.	}	

JW

ENTERED

FEB 19 2002

MEMORANDUM OPINION

The court has before it the motion of plaintiff, Loretha C. Kent ("Kent"), to remand the above-entitled case to the Circuit Court of Blount County, Alabama, from which it was removed by defendant, Bayer Corporation ("Bayer"), on the basis of diversity of citizenship. A non-diverse defendant, Miller Drug Company, Inc. ("Miller"), has filed a motion to dismiss. If Miller was fraudulently joined by Kent, as alleged in the notice of removal, its motion to dismiss is due to be granted.

Based on the complaint filed in the state court, this court cannot conclude that there is no possibility of plaintiff's obtaining any relief against Miller. Miller has affirmatively sought to refute plaintiff's allegations, but this court cannot now make a finding of fact that Miller was unaware of the alleged danger of Alka-Seltzer Plus Cold Medicine, manufactured by Bayer, when Miller offered the medication over the counter to plaintiff. For this reason, plaintiff's motion to remand will be granted by separate order.

DONE this 19th day of February, 2002.

WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE

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